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ILLINOIS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 397

THE UNITED STATES OF AMERICA,

Appellant,

vs.

**THE BORDEN COMPANY, CHARLES L. DRESSEL,
HARRY M. RESER, ET AL.**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.**

**STATEMENT OPPOSING JURISDICTION ON BEHALF
OF APPELLEES, PURE MILK ASSOCIATION, DON
M. GEYER, EDWARD F. COOKE, E. E. HOUGHTBY,
F. J. KNOX, LOWELL D. ORANGER AND JOHN P.
CASE.**

**GEORGE W. LENNON,
EDWARD J. HENNESSY,
W. C. GRAVES,
MARTIN BURNS,**
Counsel for Appellees.

**SCHUYLER & HENNESSY,
HENRY E. JACOBS,**
Of Counsel.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 31197

UNITED STATES OF AMERICA

vs.

THE BORDEN COMPANY ET AL.,

Defendants.

STATEMENT AGAINST JURISDICTION.

Filed September 2, 1939.

Come now Pure Milk Association, a corporation, Don N. Geyer, Edward F. Cooke, E. E. Houghtby, F. J. Knox, Lowell D. Oranger and John P. Case, defendants herein, by their attorneys, by authority of Rule 12 as amended of the Supreme Court of the United States, and file this statement of matters or grounds making against the jurisdiction of this Court as asserted by the United States of America, appellant herein, asking for a review of the judgment entered in this cause by appeal to the Supreme Court of the United States, and say:

1. That the jurisdiction for this appeal cannot be maintained under the provisions of 28 U. S. C. A. 345, except as paragraph (2) thereof refers to 18 U. S. C. A. 682.

2. That the decision or judgment appealed from is not based upon the validity or construction of the statute upon which the indictment is founded, but upon the validity and interpretation of the several Acts of Congress passed subsequently to the enactment of the statute upon which the indictment is founded, namely:

(a) The Clayton Act of October 15, 1914, 15 U. S. C. A. 12, *et seq.* (38 Stat. 730, *et seq.*).

(b) The Capper-Volstead Act of February 15, 1922, 7 U. S. C. A. 291, 292 (42 Stat. 388).

(c) The Cooperative Marketing Act of July 2, 1926, 7 U. S. C. A. 451, *et seq.* (44 Stat. 802, *et seq.*).

(d) The Agricultural Marketing Act of June 15, 1929, 12 U. S. C. A. 1141, *et seq.* (46 Stat. 388).

(e) The Agricultural Adjustment Act of May 12, 1933, 7 U. S. C. A. 601, *et seq.* (49 Stat. 750).

(f) The Robinson-Patman Act of 1936, 15 U. S. C. A. 13, *et seq.* (49 Stat. 1526, *et seq.*).

(g) The Agricultural Adjustment Act of May 12, 1933, as amended and reenacted by the Agricultural Marketing Agreement Act of 1937, 7 U. S. C. A. 601, *et seq.* (50 Stat. 246, *et seq.*).

3. That the decision or judgment appealed from is based upon the application, force and effect of the acts of Congress hereinbefore mentioned which supervise, regulate or control the production and marketing of agricultural products, and in basing its decision or judgment thereupon the Court did not construe or declare to be invalid the statute upon which the indictment is founded.

See Opinion filed July 13, 1939.

See "Order and Judgment on Demurrers and Motions to Quash filed by the Several Defendants, as shown of record" entered July 28, 1939.

4. That the decision or judgment appealed from is not based upon the invalidity of any act of Congress.

See Opinion filed July 13, 1939.

5. That the claim of jurisdiction for appeal of the decision or judgment to the Supreme Court of the United States is not supported by the following authorities:_____

United States v. Colgate & Co., 250 U. S. 300, 63 L. Ed. 992, 39 S. Ct. Rep. 465, 7 A. L. R. 443;

United States v. Carter, 34 S. Ct. 173, 231 U. S. 492, 58 L. Ed. 330;

United States v. Hastings, 56 S. Ct. 218, 296 U. S. 188, 80 L. Ed. 148;

United States v. Halsey Stuart & Co., 56 S. Ct. 299, 296 U. S. 451, 80 L. Ed. 323;

United States v. Storrs, 47 S. Ct. 221, 272 U. S. 652, 71 L. Ed. 460.

6. That the "Order and Judgment on Demurrers and Motions to Quash filed by the Several Defendants, as shown of record" entered July 28, 1939, appealed from is not a decision or judgment sustaining a special plea in bar.

U. S. v. Storrs et al., *supra*.

7. That the inclusion of the words "special pleas in bar" wherever the same appear in the *ex parte* "Order allowing Appeal to the Supreme Court of the United States" filed August 17, 1939, cannot be construed as aiding or supporting the jurisdiction claimed for this appeal.

U. S. v. Storrs et al., *supra*.

8. That the "Order and Judgment on Demurrers and Motions to Quash filed by the Several Defendants, as shown of record" entered July 28, 1939, from which appellant seeks an appeal, is not a decision or judgment sustaining a special plea in bar in that the statutes upon which these defendants rely to support their demurrers and motions to quash gives

the United States of America new and different remedies exclusive and in lieu of initial criminal proceedings to correct the wrongs complained of in the indictment.

See Acts cited in Paragraph 2 hereof.

9. That the "Order and Judgment on Demurrers and Motions to Quash filed by the Several Defendants, as shown of record" entered July 28, 1939, is not a decision or judgment sustaining a special plea in bar even though the allegations of the indictment might be sufficient to have maintained a criminal prosecution under Section 1 of the Sherman Act prior to the enactment of the statutes upon which these defendants rely to support their demurrers and motions to quash filed in reply to the indictment. The statutes so relied upon give sole, exclusive and plenary power to the Secretary of Agriculture of the United States to institute the initial action for redress of the wrongs complained of in the indictment by and through the proceedings defined in the statutes relied upon.

See Acts cited in Paragraph 2 hereof.

Respectfully submitted,

(Signed) GEORGE W. LENNON,

(Signed) EDWARD J. HENNESSY,

(Signed) W. C. GRAVES,

(Signed) MARTIN BURNS,

Attorneys for Defendants, Pure Milk Association, Don N. Geyer, Edward F. Cooke, E. E. Houghtby, F. J. Knox, Lowell D. Oranger and John P. Case.

SCHUYLER & HENNESSY,

HENRY E. JACOBS,

Of Counsel.